

Appl. No. 10/627,909
Amdt. dated 02/19/2007
Reply to Office Action of 08/18/2006

REMARKS

Applicant respectfully requests reconsideration and continued examination of this application in view of the amendments and following remarks. Claims 1-20 are pending in this application.

Applicant thanks the Examiner for withdrawing the previous prior art rejection.

1. Status of the Claims

Claims 1, 10, 13, 18 and 19 have been amended. Claim 20 is new. Support for the amendments can be found at ¶¶ 3, 35, 40 of the published application (1:25-31, 7:23-32 and 9:16-26 of the filed application). Claims 1 and 14 are the only independent claims.

2. Prior Art Rejections

Claims 1-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,987,402 to Nykerk et al ("Nykerk"). Claims 13-19 were rejected under 35 U.S.C. 103(a) as being obvious over Thacker (U.S. Patent No. 6,359,564). Applicant respectfully traverses the rejections.

3. Independent Claims 1 and 14 Are Patentable Over The Prior Art

Independent claims 1 and 14 both require that a detector device be mounted in at least close proximity to an at least substantially transparent door. Nykerk discloses a car alarm. Nykerk does not disclose or suggest an at least substantially transparent door. The subject matter of car alarms does not suggest an at least substantially transparent door because among other reasons, cars do not have an at least substantially transparent door. Nor is there a danger of people running or walking through a car door. The car itself provides ample notice of its presence. The device of Nykerk is an automobile alarm, the purpose of which is to detect unauthorized approach, not to warn a person of impending danger.

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Thacker discloses an occupancy status indicator for a cubicle. Cubicles do not have doors never mind substantially transparent doors. The subject matter of occupancy status indicators does not suggest an at least substantially transparent door because occupancy status indicators are generally used with opaque doors as in photography dark rooms and bathrooms. Therefore, the invention, requiring a detection device in at least close proximity to a substantially transparent door as claimed, is not taught or suggested by any combination of the references. Consequently, independent claims 1 and 14 are patentable over Nykerk and Thacker and all of the pending claims are allowable for these reasons alone.

Moreover, the Office Action of August 18, 2006 does not assert that Nykerk or Thacker disclose, teach or suggest an at least substantially transparent door. Even though the claimed invention may appear to be simple, such simplicity does not relieve the USPTO of establishing a disclosure, teaching or suggestion of each and every element of the claimed invention for an obviousness determination. As the Federal Circuit has explained,

"Though technology has burgeoned, the patent system is not limited to sophisticated technologies and powerful corporations. Nowhere in the statute or the Constitution is the patent system opened only to those who make complex inventions difficult for judges to understand and foreclosed to those who make less mysterious inventions a judge can understand The constitutional purpose is to encourage disclosure of patentable contributions to "progress in the useful arts", *all* the useful arts, not just the esoteric. The statute requires utility, novelty, and nonobviousness, not complexity."

Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1572 (Fed. Cir. 1987) (finding plastic, cable tie to be non-obvious). The Federal Circuit further stated: "The law must be the same for all patents and types of inventions." *Id.* at 1574. Thus, independent claims 1 and 14 are patentable over Nykerk and Thacker because Nykerk and Thacker, alone or in combination, fail to disclose, teach or suggest the claimed invention.

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4. Claims 10 and 18 Are Patentable Independently of Claims 1 and 14

Claims 10 and 18 both further require that a visually attractive shape having a pouch be removably mounted to an at least substantially transparent door and that the detector device be placed in the pouch. As Nykerk does not disclose an at least substantially transparent door and Thacker does not disclose a door, Nykerk and Thacker both fail to disclose, teach or suggest this limitation. In addition, they both fail to disclose a visually attractive shape for passively warning a person of the door. Moreover, both Nykerk and Thacker do not suggest such a visually attractive shape because such a shape does not provide the benefit of indicating an at least substantially transparent door in Nykerk and Thacker. Therefore, claims 10 and 18 are patentable over Nykerk and Thacker.

5. Claims 13 and 19 Are Patentable Independently of Claims 1, 10, 14 and 18

Claims 13 and 19 require the audible warning to cease or be turned off after a predetermined period of time in response to detected motion by the motion detector "so that the device does not play an audible warning continuously when people are constantly near the device." Once no motion is detected by the detector device, the audible device resets itself. Resetting allows the audible device to emit a warning again when motion is detected. Generally, the claims are directed to an audible alarm device that audibly warns people approaching a substantially transparent or transparent door. However, such a device could be annoying when people are standing near the door such as in a party or other social gathering. The invention of claims 13 and 19 solves this problem by turning off an audible warning and resetting the audible alarm device when motion is no longer detected.

Neither Nykerk nor Thacker disclose the elements of claim 13 and 19. The Office Action of August 18, 2006 points to column 4, lines 42-53 of Thacker as disclosing the limitations of claims 13 and 19. Thacker discloses an occupancy status indicator that stays on while people are present in the cubicle to indicate that someone is present in the cubicle. "Upon the expiration of a predetermined time period, the motion detector 106 can signal the occurrence of no motion to the controller 107." Col.

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4, Ins. 46-48. "[Then] the beeper 112 is sounded intermittently to indicate an emergency." Col. 4, Ins. 64-65.

Claims 13 and 19 require the audible warning to shutoff in response to detected motion, not "the occurrence of no motion." Claims 13 and 19 require resetting of the warning once no motion is detected. In contrast, Thacker discloses sounding the beeper intermittently to indicate an emergency. Thus, Thacker does not disclose the elements of claims 13 and 19 and in fact the passage cited in the Office Action teaches the opposite of claims 13 and 19. Therefore claims 13 and 19 are patentable over Nykerk and Thacker independently of patentability of the other claims.

6. Claim 20 Is Patentable

Claim 20 further requires "detecting the person approaching the door, wherein the person is unaware of the door." Neither Nykerk nor Thacker disclose, teach or suggest this limitation. Thus, claim 20 is patentable over Nykerk and Thacker even if every other limitation was disclosed.

Furthermore, Federal Circuit precedent indicates that claim 20 is patentable. In particular, "wherein the person is unaware of the door" is deliberately similar to "[administering a pharmaceutical] to a person in need thereof" which the Federal Circuit has held as distinguishing a pharmaceutical given to a person for a different purpose. *Jansen v. Rexall Sundown, Inc.*, 342 F.3d 1329, 68 USPQ2d 1154 (Fed. Cir. 2003). Nykerk emits an alarm to prevent burglary of a car. Thacker's beeper has the function of alerting third parties to the possibility that a detected first party is unconscious. Claim 20 is a method for warning a person of an at least substantially transparent door that requires detecting a person unaware of the at least substantially transparent door. Thus, claim 20 is patentable over Nykerk and Thacker for these additional reasons.

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CONCLUSION

In view of the foregoing, all of the rejections have been overcome and claims 1-20 are allowable over Nykerk and Thacker. An early indication of allowance is solicited.

Respectfully submitted,

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